IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**COMPANY PETITION NO.360 OF 1998**

In the matter of the Companies Act, 1956;

AND

In the matter of M/s.Trident Steels Limited.

Integrated Finance Company Limited )..Petitioners

Mr.Naushad Engineer i/b.Federal & Rashmikant for the Petitioners.

Mr.Khinkhabwala i/b.Mulla & Mulla & Craigie Blunt & Caroe for the Respondent Company.

**CORAM: SMT.NISHITA MHATRE, J.**

**DATED: 15TH DECEMBER 2005**

**P.C.:**

. This Petition has been filed to claim dues payable to the Petitioners by the Company known as Trident Steels Limited under a hire purchase agreement. Under the terms of the hire purchase agreement, the duration of which was for sixty months, an amount of Rs.1,51,986/- was payable by the Company to the Petitioners per month. The Company undertook to pay the hire charges without committing any defaults. The Company paid the amount of hire charges for the first four months and a part of the charges for the fifth month. Post dated cheques were issued for the hire

charges. Time and again, the Company requested the Petitioners to defer presentation of the cheques on the due dates. By a letter dated 14th February 1996, one of the post dated cheques was substituted by the Company. A further letter was written by the Company assuring the Petitioner that it would discharge its liability soon and again requested the Petitioners to defer presentation of the cheque for a period of three to four months. The Petitioners by their letter dated 21st March 1996 informed the Company that they were unable to accede to the request made. Correspondence ensued between the parties. The Company failed and neglected to discharge its liabilities. The cheques issued by the Company were dishonoured. After continuous defaults, the Petitioners issued the statutory notice to the Company under Sections 433 and 434 of the Companies Act, 1956 claiming an aggregate amount of Rs.86,66,494/-. The Company did not bother to reply to the statutory notice which was sent to the registered office of the Company. Left with no alternative, the Petitioners filed the present Petition. The Petition was admitted and has been advertised in accordance with law.

2. There is no reply filed to the present Petition. However, on several occasions in the past, the Company informed the Court that the Reference before the Board For Industrial and Financial Reconstruction (BIFR) was pending and, therefore, the Company Petition should not

be proceeded with. The Official Liquidator, who was appointed as the provisional Liquidator at the time when the Petition was admitted, pointed out that the BIFR Reference was rejected. In view of this statement made, the learned Advocate for the Company was directed to file an affidavit stating the progress in the BIFR Reference. An affidavit is filed today by the authorised signatory of the Company Ganashyam Gadigaonkar. He has annexed the correspondence which the Company had with the Secretary of the BIFR. By letter dated 8th December 2005, the BIFR has informed the Company that the Reference has already been rejected. The learned Advocate for the Company insists that after the order of AAIFR, a fresh Reference was filed and it is still pending. However, there is no mention in the letter dated 8th December 2005 about such a Reference pending before the BIFR. Hence, the submission of the learned Advocate for the Company cannot be accepted.

3. No reply to the Petition has been filed by the Company. An adjournment was sought for filing the reply. This has been refused on account of the earlier order being passed indicating that if the Company was unable to demonstrate that the Reference before the BIFR was still pending, the Petition would be proceeded with on merits.

4. The main defence raised by the learned Advocate for the Company is that the statutory notice was not

received at the registered office of the Company and, therefore, the Petition is not maintainable. He also submits that the notice is defective since the exact amount of the debt due and payable by the Company to the Petitioners has not been quantified and mentioned in the notice. He then contends that under clause 25 of the hire purchase agreement, the parties had impliedly agreed that only a suit would be filed if there was any default in payment of the hire charges and that the Suit would be filed in a Court within the local limits of Madras (Chennai) city. He further submits that the Company had requested the Petitioners to take away the machinery and under clause 12 of the hire purchase agreement, it was incumbent upon the Petitioners to remove the machinery from the Company’s establishment once there was a default.

5. All the defences raised by the Company are untenable. The statutory notice has been issued to the registered office of the Company in Jalgaon. It has been received by the Company in Jalgaon and, therefore, the submission of the learned Advocate for the Company cannot be accepted. According to him, the stamp which is borne on the acknowledgement of the speed post mentions the words "Chinchbunder" and, therefore, it was not received in Jalgaon. He points out that there is no stamp indicating that the notice was sent to Jalgaon and that it had been received by the postal authorities in

Jalgaon. In my view, this submission is an after thought. The acknowledgement clearly bears the stamp of the Respondent Company. It has been addressed to the registered office in Jalgaon and obviously, therefore, it was received by the Company in Jalgaon. It is not the case of the Company that the acknowledgement does not bear its stamp or that the Company has received the notice at some other branch or office of the Company Mr.Engineer appearing for the Petitioners submits that such a contention regarding non-receipt of the statutory notice at the registered office of the Company could be entertained only at the stage of admission of the Petition and not at the stage of final hearing. The learned Advocate for the Company pointed out the judgment of the Division Bench of this Court in the case of *N.L.Mehta Cinema Enterprises (P.) Ltd.* vs. *Pravinchandra P. Mehta*, **(1991) Company Cases (Vol.70) (Bom.) 31**, indicating that the Petition was liable to be dismissed at the stage of final hearing when it is pointed out to the Court that the statutory notice was not received at the registered office of the Company. In my view, there is no doubt that in the facts and circumstances of this case, that the notice has been received in Jalgaon by the Company. There is no affidavit in reply filed by the Company although the Petition has been pending in this Court for seven years.

6. The submission of the learned Advocate for the

Company that the notice is defective since the exact amount of the debt has not been indicated is unsustainable. The Petitioners have mentioned the amount in the statutory notice. Besides, the Division Bench of this Court in the case of *Tata Finance Ltd.* vs. *Kanoria Sugar & General Manufacturing Company Ltd.*, **2002 (3) Bom. C.R. 173**, has held that if a part of the creditor's claim is disputed by the Company and the remaining amount exceeds Rs.500/- and order of winding up cannot be refused on the ground that there is a dispute regarding the exact amount owed by the Company.

7. The submission of the learned Advocate for the Company that the Suit ought to have been filed in Chennai is also without merit. The Company Petition would lie only within the jurisdiction of this Court, the jurisdiction of the Company being at Jalgaon. The clause in the hire purchase agreement does not preclude the Petitioners from taking action under the Companies Act.

8. The other submission of the learned Advocate for the Company that it was incumbent on the Petitioners under clause 12 of the hire purchase agreement to take away the machinery once there was a default, is also untenable. Clause 12 does not in any manner cast an obligation on the hirer to take away the machinery if there are any arrears payable under the hire purchase agreement. It is an option given to the hirer to remove

the machinery in case of a default.

9. In my view, the Company Petition deserves to be allowed. Petition allowed in terms of prayer clauses (a) and (b).